IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 5664 of 2007
With
CRIMINAL MISC.APPLICATION No. 5667 of 2007
With
CRIMINAL MISC.APPLICATION No. 5669 of 2007
With
CRIMINAL MISC.APPLICATION No. 5670 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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RAJENDRA V.PARIKH & 6 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
NANAVATY ADVOCATES for Applicant(s) : 1 - 7.
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/09/2007

ORAL JUDGMENT

1. As common question of facts and law arise in this group of applications, they are being disposed of by this common judgment and order.

Cr.M.A. No. 5664 of 2007 has been filed by some of the original accused to quash and set aside the complaint filed by opponent No.2-herein in Criminal Case No.6476 of 2007 pending before the learned J.M.F.C., Vadodara as well as the summons issued by the learned Chief Judicial Magistrate in pursuance to the said complaint.

Cr.M.A. No. 5667 of 2007 has been filed by some of the original accused to quash and set aside the complaint filed by opponent No.2-herein in Criminal Case No.4049 of 2007 pending before the learned J.M.F.C., Vadodara as well as the summons issued by the learned Chief Judicial Magistrate in pursuance to the said complaint.

Cr.M.A. No. 5669 of 2007 has been filed by some of the original accused to quash and set aside the complaint filed by opponent No.2-herein in Criminal Case No.3342 of 2007 pending before the

learned J.M.F.C., Vadodara as well as the summons issued by the learned Chief Judicial Magistrate in pursuance to the said complaint.

Cr.M.A. No. 5670 of 2007 has been filed by some of the original accused to quash and set aside the complaint filed by opponent No.2-herein in Criminal Case No.4978 of 2007 pending before the learned J.M.F.C., Vadodara as well as the summons issued by the learned Chief Judicial Magistrate in pursuance to the said complaint.

2. Respondent No.2 herein in each of the applications had filed aforesaid Criminal cases against respective applicants and others inclusive of one Company GPT Steel Industries Ltd. for the offence punishable under Section 138 of the Negotiable Instruments Act ('NIAct' for short) alleging inter-alia that accused No.1 is a registered Company under the Indian Companies Act having its registered office and corporate office at the address mentioned in the complaint and accused No.2 is Chairman of accused No.1 – Company and accused Nos. 3 to 7 are Directors

of accused No.1. Accused No.8 is Vice President and finance controller of accused No.1, Accused No.9 is Company Secretary of accused No.1- Company, Accused No.10 is authorized person of accused No.1 – Company. It is further averred in the complaint that all the accused are looking after day to day business and financial aspects of the company and are responsible for the act of accused No.1-Company. It is further averred in the complaint that cheques in question were issued by accused No.1-Company to the respective complainants and when they were deposited, all the cheques came to be returned by their Bank with a written memo-endorsement 'Payment stop by the Drawer'. It is submitted that thereafter respective complainants served/send legal notices as per the provisions of the NIAct stating that cheques which were issued for the legal debts are returned and inspite of the aforesaid notice under Section 138 of the NIAct asking accused persons to make payment of cheque amount, the accused persons neither paid the demanded amount nor replied to the notices within prescribed time of 15 days of receipt of legal notices, thus committed offence under Sections 138

and 141 of the NIAct. Therefore, aforesaid complaints came to be filed for the offences punishable under Sections 138 and 141 of the NIAct. In the aforesaid criminal cases, learned Chief Judicial Magistrate, issued summons upon the respective petitioners and other accused persons. Therefore, respective petitioners – accused Nos. 4 to 10 have preferred the present applications under Section 482 of the Cr.P.C. to quash the aforesaid criminal complaints and summons issued therein.

3. Mr.N.D.Nanavati, learned Senior Advocate appearing on behalf of respective petitioners – original accused No.4 to 10 has vehemently submitted that none of the applicants were in day to day affairs and/or in-charge of accused No.1-Company. Therefore, they cannot be held vicariously liable under Section 141 of the NIAct. Therefore, impugned complaints filed against them for the offences punishable under Section 138 read with Section 141 of the NIAct requires to be quashed and set aside as the same would be abuse of process of Court. It is submitted that during day to day course of business,

various resolutions came to be passed and minutes have been prepared for the meetings held by the Company and looking to the said minutes only two Directors i.e. accused Nos. 7 and 8 in the original complaint have remained present and third Director i.e. Bharat Amratbhai Parikh- original accused No.9 has been granted leave to remain absent from all the meetings convened by the Company. Therefore, it is submitted that this clearly shows that applicants including original accused No.9 were not in-charge of the Company at any relevant point of time. Therefore, same have been wrongly dragged into the present proceedings only with a view to create acute pressure. It is further submitted that applicant No.3 original accused No.5 was appointed Director for an on behalf of applicant No.4 – original - accused No.6 at the relevant point of time. Therefore, it is submitted that if criminal case is allowed to be continued against the applicants, the applicants will have to suffer from undue hardship. Therefore, it is requested to allow all these applications and to quash and set aside the criminal complaints / cases so far as the applicants are concerned.

4. All these applications are opposed by Mr.K.T.Dave, learned APP and by relying upon the decision of the Hon'ble Supreme Court in the case of ***N.Rangachari and Ors. v/s. Bharat Sanchar Nigam Ltd.*** reported in *AIR 2007 SC 1682*. It is submitted that when there are clear allegations in the complaint against the applicants and other Directors, the question whether they were in charge of the Company at the relevant point of time can be adjudged during trial and the complaint is not required to be quashed in exercise of powers under Section 482 of the Cr.P.C. Therefore, it is requested to dismiss all the applications.

5. Heard the learned Advocates appearing on behalf of the respective parties.

6. At the outset it is required to be noted that in Criminal Case No. 6476 of 2007 following averments and allegations are made in the complaint against the applicants and others:

"1. Complainant is residing at above address and

doing business of construction & consultancy. Accused No.1 is a company registered under Indian Company Act, having its registered office and corporate office at the address shown above. Accused No.2 is a Chairman of accused No.1 Company & accused Nos. 3 to 7 are the Directors of accused No.1 Company, accused No.8 is a Vice President and finance controller of accused No.1 Company, accused No.10 is authorized person of accused No.1 Company. All the accused are looking after the day to day business & financial aspects of the company and are responsible for the act of accused No.1 Company. It is the legal authorized person of accused No.1 Company. They have promises that they will pay back the invested amount as early as possible, by buying back the shares held with complainant & his family members; hence complainant had trusted them as they are directors of one of the reputed company in the market."

In Criminal Case No.4049 of 2007 following averments and allegations are made in the complaint against the applicants and others:

"2. That the accused No.1 Company is running a steel industry of manufacturing tin plates and thus the Accused No.1 company herein which is engaged in the business / industry of manufacturing steel products. That the accused

No.1 company herein is having its registered office at Gandhidham as described and mentioned vide the address at Sr.No.1 hereinabove in the title clause in the present complaint. However, the accused No.1 company herein is also having its corporate, international and branch offices at the address as mentioned in the title clause of this complaint. The accused no.1 company herein is carrying on its business and is having its different addresses as mentioned in the title clause of this complaint. That accused No.1 Company is having its different offices / addresses at the places as described in the title clause of this complaint and hence the accused company is referred to as accused no.1 to 6 as having its different address as described respectively. The accused Nos. 7 to 12 herein are the Directors as envisaged by the Companies Act of the accused No.1 company herein. That accused No. 7 to 12 are in charge as also they are managing and responsible for company for the conduct of its business as directors. Thus the accused Nos. 7 to 12 are the persons who are the Directors and they are in charge and managing the Accused No.1 company herein and its business. That the accused Nos. 13 to 15 are in charge of the process of execution and carrying out various administrative and managerial responsibility in their respective status / capacities while acting in and on behalf of the accused no.1

company herein. That the accused No. 7 to 12 herein being the Directors of the accused No.1 company herein who are regulating and personally managing the business and all financial affairs of the accused no.1 company herein in their capacities as its Directors. Therefore, they are the persons who are having complete knowledge about the business operations and overall management of the accused No.1 company herein. That simultaneously the accused Nos. 13 to 15 are also aware and are responsible to the accused No.1 company herein for the conduct of its business and are aware and having complete knowledge of the business operations and overall administration and financial operations of the accused no.1 company herein. The management of affairs and the business of the accused No.1 Company herein is thus conducted, managed and executed by the accused Nos.7 to 12 and accused Nos. 13 to 15 respectively. Thus, all the accused are responsible for and to the accused No.1 Company herein for the conduct of its various business activities. The aforesaid facts stand proved from the documents as submitted vide separate list of documents as also from the conduct/actions on the part of all the accused in respect of the facts, circumstances and instances related to the subject matter of the present complaint.

4. It was confirmed to complainant by all the

accused that the amount as advanced by the complainant to the accused shall be repaid in short-term of six months. However, there was a failure on the part of all the accused in making repayment of the amount to complainant. Therefore, the complainant out of serious concern for their claim and recovery called upon all the accused and conveyed their concern about the default in repayment.

10. It is most humbly submitted that all the accused have thus drawn and delivered the subject cheque in favour of complainant in discharge of their clear liability of making repayment of amount as payable by the accused and receivable by complainant in terms of clear and cogent document as submitted vide separate list of documents. That the said cheque is dishonoured after the same was legitimately presented by the complainant. That after the cheque got dishonoured the complainant has issued and delivered the notice of demand duly received by all the accused. That all the accused have refused and failed to pay the amount of Rs.71,73,169/- (Rupees Seventy One Lac Seventy Three Thousand One Hundred Sixty Nine only) despite receipt of notice of demand. Further all the accused being directors and or officers being in charge of and managing the business, administration of the accused No.1 Company and all the accused having clear

knowledge and having handled the entire process / conduct of the accused No.1 Company, which has resulted in issuance of subject cheque which has been dishonoured as complained vide PRESENT COMPLAINT, in view of these facts all the accused are liable and responsible for the consequences and are accordingly required to be punished in accordance with section 138 of Negotiable Act. The copies of all the documents as referred to in PRESENT COMPLAINT are submitted vide separate list of documents along with this complaint.

11. It is most humbly submitted that all the accused have committed the wrong / offence as envisaged by section 138 of the Negotiable Instruments Act as per the details and facts as averred herein before in the PRESENT COMPLAINT. That accordingly PRESENT COMPLAINT is filed by and on behalf of the complainant company through its authorized signatory as authorized to file PRESENT COMPLAINT vide resolution of the complainant company the copy whereof is submitted vide separate list of documents.

In Criminal Case No.3342 of 2007 following averments and allegations are made in the complaint against the respective applicants and others:

"2. That the accused No.1 Company is running a steel industry of manufacturing tin plates and

thus the Accused No.1 company herein which is engaged in the business. That the accused No.1 company herein is having its registered office at Gandhidham as described and mentioned vide the address at Sr.No.1 hereinabove in the title clause in the present complaint. However, the accused No.1 company herein is also having its corporate, international and branch offices at the address as mentioned in the title clause of this complaint. The accused no.1 company herein is carrying on its business and is having its different addresses as mentioned in the title clause of this complaint. The accused Nos. 7 to 12 herein are the Directors as envisaged by the Companies Act of the accused No.1 company herein. That accused No. 7 to 12 are in charge as also they are managing and responsible for company for the conduct of its business as directors. Thus the accused Nos. 7 to 12 are the persons who are the Directors and they are in charge and managing the Accused No.1 company herein and its business. That the accused Nos. 13 to 15 are in charge of the process of execution and carrying out various administrative and managerial responsibility in their respective status / capacities while acting in and on behalf of the accused no.1 company herein. That the accused No. 7 to 12 herein being the Directors of the accused No.1 company herein who are regulating and personally managing the business and all financial affairs

of the accused no.1 company herein in their capacities as its Directors. Therefore, they are the persons who are having complete knowledge about the business operations and overall management of the accused No.1 company herein. That simultaneously the accused Nos. 13 to 15 are also aware and are responsible to the accused No.1 company herein for the conduct of its business and are aware and having complete knowledge of the business operations and overall administration and financial operations of the accused no.1 company herein. The management of affairs and the business of the accused No.1 Company herein is thus conducted, managed and executed by the accused Nos.7 to 12 and accused Nos. 13 to 15 respectively. Thus, all the accused are responsible for and to the accused No.1 Company herein for the conduct of its various business activities. The aforesaid facts stand proved from the documents as submitted vide separate list of documents as also from the conduct/actions on the part of all the accused in respect of the facts, circumstances and instances related to the subject matter of the present complaint.

6. That in background of aforementioned facts and circumstances all the accused herein became and are liable to repay and remit the remaining and total amount to the complainant. The liability of all the accused is thus founded and

emerging from clear and cogent documents i.e. The letter dated 25th May 2006 and the cheque as drawn, delivered and given/sent by the accused to the complainant. The copy of the aforesaid letter is produced vide separate list of documents. That accordingly in discharge of the co-extensive and joint liability of all the accused the cheque is drawn and delivered to the complainant by and in the name of accused no.1 company as signed by accused no.7 while acting for and on behalf of other directors and the accused no.1 company. That the complainant herein has thus received the cheque bearing number 027033 dated 31.12.2006 for Rs.3,63,49,594/- in terms of the letter dated 25.05.2006 from the accused. That accordingly the complainant has received the cheque bearing number 027033 for Rs.3,62,49,594/- from all the accused in discharge of their clear legal liability as confirmed vide cogent letter dated 25.05.2006 as also the document of Corporate Guarantee dated 5th May, 2006.

8. That the cheque as drawn and delivered by accused no.1 is issued well within the knowledge and with clear consent and in the course of their administrative duties and performance of their roles in their respective capacities.

10. Thus, the cheque as referred to above has been drawn on behalf of accused no.1 is drawn

and delivered well within the knowledge and through all the accused which has been dishonoured by bankers of accused as envisaged by section 138 of the Negotiable Instruments Act, 1881.

11. That the cheque as referred to herein above is drawn on behalf of accused no.1 company and is signed by the accused no.7, while the same has been delivered well within the knowledge and with due consent and of all the accused being directors and/or the persons in charge of /and managing the conduct and business of accused no.1 company. It is pertinent to note here that the cheque which is drawn and delivered to the complainant is drawn in furtherance with the execution of deed of Corporate Guarantee as signed by accused no.8, while the resolution in respect of the subject cheque is also passed confirming the fact that subject cheque is drawn and delivered by and in the name of accused no.1 through and with the due consent and clear knowledge of all the accused. The documents such as Board resolution of accused no.1 company, the deed of Corporate Guarantee and the letter along with which the subject cheque has been forwarded to the complainant confirms that all the accused are responsible for the consequences and punishments in law as envisaged by section 138 of the Negotiable Instruments Act."

In Criminal Case No.4978 of 2007 following averments and allegations are made in the complaint against the petitioners and others:

"2. That the accused No.1 Company is running a steel industry of manufacturing tin plates and thus the Accused No.1 company herein which is engaged in the business/ industry of manufacturing steel products. That the accused No.1 company herein is having its registered office at Gandhidham as described and mentioned vide the address at Sr.No.1 hereinabove in the title clause in the present complaint. However, the accused No.1 company herein is also having its corporate, international and branch offices at the address as mentioned in the title clause of this complaint. The accused no.1 company herein is carrying on its business and is having its different addresses as mentioned in the title clause of this complaint. That accused no.1 Company is having its different offices / addresses at the places as described in the title clause of this complaint and hence the accused company is referred to as accused no.1 to 6 as having its different addresses as described respectively. The accused Nos. 7 to 12 herein are the Directors as envisaged by the Companies Act of the accused No.1 company herein. That accused No. 7 to 12 are in charge as also they are managing and responsible for company for the conduct of its business as directors. Thus the accused Nos. 7 to 12 are

the persons who are the Directors and they are in charge and managing the Accused No.1 company herein and its business. That the accused Nos. 13 to 15 are in charge of the process of execution and carrying out various administrative and managerial responsibility in their respective status / capacities while acting in and on behalf of the accused no.1 company herein. That the accused No. 7 to 12 herein being the Directors of the accused No.1 company herein who are regulating and personally managing the business and all financial affairs of the accused no.1 company herein in their capacities as its Directors. Therefore, they are the persons who are having complete knowledge about the business operations and overall management of the accused No.1 company herein. That simultaneously the accused Nos. 13 to 15 are also aware and are responsible to the accused No.1 company herein for the conduct of its business and are aware and having complete knowledge of the business operations and overall administration and financial operations of the accused no.1 company herein. The management of affairs and the business of the accused No.1 Company herein is thus conducted, managed and executed by the accused Nos.7 to 12 and accused Nos. 13 to 15 respectively. Thus, all the accused are responsible for and to the accused No.1 Company herein for the conduct of its various business activities. The aforesaid

facts stand proved from the documents as submitted vide separate list of documents as also from the conduct/actions on the part of all the accused in respect of the facts, circumstances and instances related to the subject matter of the present complaint.

7. That the cheque as referred to hereinabove is drawn in the name of accused No.1 Company and is signed by accused no.7 while the same has been delivered well within the knowledge and with due consent of all accused being Directors and/or persons in-charge of and managing the conduct and business of accused no.1 Company. That in fact accused all have clear knowledge about the liability of accused no.1. Therefore, in fact accused all being persons managing the affairs, administration and management of the company, accused all should have taken due care to ensure the proper and timely realisztion of the cheque as drawn in the name of accused no.1 Company as issued through and within the knowledge of all the accused. That notwithstanding a statutory expectation accused all have failed in exercising feven bare minimum standard of due diligence in preventing the dishonor of cheque which in fact has given rise to enforceable right in law, in favour of complainant against all accused as envisaged by section 138 of the Negotiable Instruments Act."

7. Now considering the averments and allegations in the respective complaints, decision of the Hon'ble Supreme Court in the case of ***N.Rangachari (supra)*** is required to be considered. As held and observed by the Hon'ble Supreme Court in the aforesaid case, when the allegations are in the complaint that at the time at which dishonoured cheques were issued by the Company, accused – persons were Directors of the Company and were in charge of and day to day affairs of the Company, it is not proper to split hairs in reading the complaint so as to come to a conclusion that the allegations as a whole are not sufficient to show that at the relevant point of time, they are not alleged to be persons in charge of the affairs of the Company and it cannot be said that allegations in the complaint against them do not contain sufficient averemnts to justify issue of process to them and therefore, the complaint ought to have been quashed in exercise of powers under Section 482 of the Cr.P.C. It is also further observed by the Hon'ble Supreme Court in the said decision that in fact, an advertence to Sections 138 and 141 shows that on the other elements of an

offence under section 138 are not being satisfied, the burden is on the Board of the Directors or the Officers in charge of the affairs of the Company to show that they are not liable to be convicted and such contentions are required to be adjudicated during trial and complaint is not required to be quashed in exercise of powers under Section 482 of the Cr.P.C.

8. Now considering facts of the case on hand, reading complaint as a whole, it is clear that averments in the complaint are that at the time at which dishonoured cheques were issued by the Company, applicants and others were Directors and/or authorized persons of the Company and they were incharge of the affairs of the Company and were infact in knowledge of issuance of cheuqes and therefore, considering the decision of the N.Rangachari(supra) it is not proper to split hairs in reading the complaint so as to come to a conclusion that the allegations as a whole are not sufficient to show that at the relevant point of time the applicants were not alleged to have been persons

incharge of the Company and as observed by the Hon'ble Supreme Court in the aforesaid decision, impugned complaints are not required to be quashed and set aside in exercise of powers under Section 482 of the Cr.P.C. and that any restrictions on their power or existence of any special circumstances that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial such restrictions or to show that at the relevant point of time they were not in charge of the Company. Considering the allegations and averments in the complaints, reading the same as a whole and the contention which is sought to be raised, the applicants can raise the contentions at the time of the trial. Under the circumstances, the impugned complaints cannot be quashed.

9. For the reasons stated above, all the applications fail, requires dismissal and accordingly they are dismissed.

[M.R.Shah, J.]

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